



ITC

Docket No.: 1349.1146

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Myung-ho KYUNG

Serial No. 10/609,422

Group Art Unit: 2852

Confirmation No. 9462

Filed: July 1, 2003

Examiner: Beatty, Robert B.

For: NON-CONTACT DEVELOPING TYPE IMAGE FORMING APPARATUS AND COLOR  
IMAGE DEVELOPING METHOD USING THE SAME

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

This is responsive to the Office Action mailed September 22, 2004, having a shortened period for response set to expire on October 22, 2004, the following remarks are provided.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect group I, claims 1-3 and 6-9 in response to the preliminary restriction requirement set forth in the Office Action.

II. Applicants Traverse the Requirement

Insofar as Group II is concerned, it is believed that claims 4 and 5 are so closely related to elected claims 1-3 and 6-9 that they should remain in the same application. The elected claims 1-3 and 6-9 are directed to, for example, an image forming apparatus comprising a plurality of developers each comprising a developing roller and claims 4-5 are drawn to an apparatus comprising first and second developing rollers. There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing both subcombinations in the same field of technology. While it is noted that the Examiner has identified different classifications for the subcombinations, it is believed that classification is not conclusive on the question of restriction. It is believed, moreover, that evaluation of both sets of claims would not provide an undue burden upon the

Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Group II claims by filing a divisional application.

MPEP §803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is required.

Even if the Examiner considers claims 4-5 to be a separate invention from claims 1-3 and 6-9, the Applicants respectfully request the Examiner to consider claims 1-3 and 6-9 (Group I) and 4-5 (Group II) together.

### III. Conclusion

Upon review of references involved in this field of technology, when considering that the apparatus recited by the Group II claims is directed to an apparatus comprising first and second developing rollers, and elected claims 1-3 and 6-9 are directed to, for example, an image forming apparatus comprising a plurality of developers each comprising a developing roller, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application.

If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 19-3935.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 10-21-08

By: 

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